

RECEIVED

DOCKET FILE COPY ORIGINAL AUG 15 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20037

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Geographic Partitioning and Spectrum
Disaggregation by Commercial Mobile
Radio Services Licensees

Implementation of Section 257 of the
Communications Act - Elimination of
Market Entry Barriers

)
)
) WT Docket No. 96-148
)
)

) GN Docket No. 96-113
)
)

COMMENTS OF
CENTURY PERSONAL ACCESS NETWORK, INC.

Susan W. Smith
Century Personal Access
Network, Inc.
3505 Summerhill Rd.
Texarkana, TX 75501

August 15, 1996

No. of Copies rec'd
List ABCDE

029

Table of Contents

Summary	ii
The 1996 Act Definition Of "Rural Telephone Company" Governs Partitioning In All Six Broadband PCS Frequency Blocks	2
Geographic Partitioning Was The Primary Designated Entity Benefit Provided To Rural Telephone Companies	4
Commission Should Not Expand A, B, D and E Block Partitioning To Encompass All "Qualified" Entities	9
Commission Should Not Expand C and F Block Partitioning To Encompass Small Businesses	10
Commission Should Not Preclude Any Rural Telephone Companies From Partitioning C And F Block Licenses	11
Conclusion	12

Summary

Century Personal Access Network, Inc. (Century) was established to acquire, develop and operate PCS systems. Century qualifies as a "rural telephone company" under Section 24.720(e) of the Rules, and has developed its business plan in reliance on its ability to acquire portions of broadband PCS licenses in the A, B, C, D, E and F blocks pursuant to existing geographic partition provisions of Section 24.714 of the Rules.

The Commission's existing partition rule has been the only specific "designated entity" benefit afforded to rural telephone companies under the mandate of Section 309(j) of the Act. While this benefit does not rise to the level of the bid credits and installment payment options afforded small business, partitioning still provides some opportunity for rural telephone companies to participate in the future provision of broadband PCS in their rural exchange areas. Consequently, Century strongly objects to the Commission's proposal to permit A, B, D and E block licensees to partition portions of their license areas to any qualifying entities. Allowing any entity to obtain partitioning agreements, invites severe disruption of the Commission's licensing scheme and would create technical and administrative difficulties completely at odds with the Commission's stated goal of deploying broadband PCS in rural telephone company exchange areas "rapidly."

Therefore, Century submits that the Commission should not change the existing partitioning rule before rural telephone

companies have a fair opportunity to negotiate and implement partitions for their rural telephone service areas and further the Commission should expressly declare that the existing partitioning rule remain in effect for the first ten-year term of all MTA and BTA licensees.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20037**

In the Matter of)	
)	
Geographic Partitioning and Spectrum)	WT Docket No. 96-148
Disaggregation by Commercial Mobile)	
Radio Services Licensees)	
)	
Implementation of Section 257 of the)	GN Docket No. 96-113
Communications Act - Elimination of)	
Market Entry Barriers)	

**COMMENTS OF
CENTURY PERSONAL ACCESS NETWORK, INC.**

Century Personal Access Network, Inc. ("Century") submits its Comments in response to the Notice Of Proposed Rulemaking, FCC 96-287, released July 15, 1996 ("NPRM") in the referenced proceeding.

Century is a wholly-owned subsidiary of Century Telephone Enterprises, Inc. ("Century Enterprises"), and has been organized to acquire, develop and operate Personal Communications Service ("PCS") systems. Century has applied for broadband PCS licenses in the D and E blocks, and is awaiting the commencement of the D, E and F block auction. In addition, Century Enterprises qualifies as a "rural telephone company" under Section 24.720(e) of the Rules, and Century wishes to acquire portions of broadband PCS licenses in the A, B, C, D, E and F blocks pursuant to the existing geographic partition provisions of Section 24.714 of the Rules.

Geographic partitioning was the only specific benefit provided to rural telephone companies during the Commission's implementation of the designated entity provisions of Section 309(j) of the Act.

Century believes the Commission is legally and morally obligated to fulfill its pre-auction promises that rural telephone companies will be given a fair opportunity via partitions (particularly, post-auction partitions) to bring PCS services to their local service areas. This can be accomplished only by continuing to limit eligibility for partitions to rural telephone companies (as presently defined) for at least the initial ten-year broadband PCS license term. Century vigorously opposes the NPRM's proposals to abrogate, dilute and/or limit the partitioning rights of rural telephone companies before they have had a chance to negotiate or implement partition arrangements -- in fact, before the majority of PCS licenses have even been issued or auctioned.

**The 1996 Act Definition Of "Rural Telephone Company"
Governs Partitioning In All Six Broadband PCS Frequency Blocks**

At present, only rural telephone companies are eligible to obtain geographically partitioned broadband PCS licenses under Section 24.714 of the Rules. The Commission's recently revised definition of "rural telephone company" [47 C.F.R. § 24.720(e) (1996)] governs eligibility for partitioning with respect to A, B, C, D, E and F block licenses.

Prior to passage of the Telecommunications Act of 1996 ("1996 Act"), there was no general statutory definition of "rural telephone company," and the Commission defined such companies in different ways for different purposes. These definitions included former Section 24.720(e) of the Rules, which defined a "rural telephone company" for broadband PCS purposes as "a local exchange

carrier having 100,000 or fewer access lines, including all affiliates." 47 C.F.R. § 24.720(e) (1994).

The 1996 Act added Section 3(37) to the Communications Act (47 U.S.C. § 153(37)) establishing, for the first time, a statutory definition of "rural telephone company." Under this definition, a "rural telephone company" is:

a local exchange carrier operating entity to the extent that such entity-

(A) provides common carrier service to any local exchange carrier study area that does not include either-

(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

In its Report and Order (Amendment of Parts 20 and 24 of the Commission's Rules - Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap), WT Docket No. 96-59, FCC 96-278 (released June 24, 1996), the Commission amended Section 24.720(e) to replace its initial definition of "rural telephone company" with the 1996 Act definition. 47 C.F.R. § 24.720(e) (1996). The Commission stated that the 1996 Act definition is one of general applicability, and that its adoption for Section 309(j) auction purposes promotes uniformity of regulations and eases regulatory burdens. Id. at paras. 66-67.

Whereas the June 24, 1996 Report and Order dealt primarily with the D, E and F block auction, the Commission's revised "rural telephone company" definition clearly governs eligibility for geographic partitioning with respect to the previously auctioned A, B and C block licenses, as well as the D, E and F block licenses to be auctioned in the future. Section 24.714 is a general rule which expressly encompasses the partition of licenses in all six broadband PCS frequency blocks -- the Major Trading Area ("MTA") licenses (A and B blocks) and the Basic Trading Area ("BTA") licenses (C, D, E and F blocks). For all six of these blocks, Section 24.714(a) limits eligibility for partitions to "a rural telephone company, as defined in § 24.720(e)." As of the July 31, 1996 effective date of the revised Section 24.720(e), the 1996 Act definition is the only applicable Commission definition of "rural telephone company" for broadband PCS partition purposes.

Century believes that the foregoing interpretation of Section 24.714 and revised Section 24.720(e) is wholly consistent with that expressed and intended by the Commission in paragraphs 62 through 67 of its June 24, 1996 Report and Order, supra. If the Commission is of a different view, Century requests the Commission to clarify and explain why the 1996 Act definition of "rural telephone company" does not govern eligibility for Section 24.714 partitions in all six broadband PCS frequency blocks.

**Geographic Partitioning Was The Primary Designated
Entity Benefit Provided To Rural Telephone Companies**

Section 309(j)(3)(B) of the Act requires the Commission to

design competitive bidding systems that "disseminat[e] licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." Section 309(j)(4)(D) requires the Commission to prescribe auction regulations to "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services [via] the use of tax certificates, bidding preferences and other procedures."

In its Fifth Report And Order (Implementation of Section 309(j) of the Communications Act - Competitive Bidding), PP Docket No. 93-253, 9 FCC Rcd 5532, 5598 (1994), the Commission adopted the Section 24.714 partitioning system to provide rural telephone companies an "enhanced opportunity to participate in the provision of broadband PCS and to deploy broadband PCS in their rural service areas rapidly." The Commission made it clear that geographic partitioning was its response to the question as to how it could "best ensure that rural areas are provided broadband PCS." Id. at 5597. It found that partitioning was a means to enable rural telephone companies to serve areas where they already provide service; and that, as such, it "would encourage rural telephone companies to take advantage of existing infrastructure in providing PCS services, thereby speeding service to rural areas." Id. at 5598.

The Commission declined to adopt any other specific auction-related measures for rural telephone companies. Id. at 5599. It

stated that partitioning "will provide rural telephone companies with substantial capabilities to acquire licenses to provide broadband PCS in their rural telephone service areas, consistent with our statutory mandate." Id. Moreover, it promised that "our eligibility criteria for bidding in the entrepreneurs' blocks ... will permit virtually all telephone companies whose service areas are predominately rural to bid on licenses in frequency blocks C and F without competition from the large telephone companies and other deep-pocketed bidders." Id.

In its Fifth Memorandum Report And Order (Implementation of Section 309(j) of the Communications Act - Competitive Bidding), PP Docket No. 93-253, 10 FCC Rcd 403, 457, 462 (1994), the Commission rejected proposals for a bidding credit for rural telephone companies. It reiterated that partitioning would "allow [rural telephone companies] to effectively compete for licenses that serve rural territories." Id. at 462-63. Moreover, it determined that rural telephone companies that did not qualify as "entrepreneurs" would be eligible to receive partitioned portions of C and F block licenses, stating:

To the extent that a rural telephone company does not qualify for the entrepreneurs' blocks, however, we disagree that it will be forced to negotiate with other licensees that may not be willing to sell their broadband PCS interests in the form of partitioned licenses or other ownership arrangements. On the contrary, we believe that other applicants and licensees will find rural telephone companies attractive to negotiate with, because of the efficiencies associated with rural telephone companies existing infrastructure. Additionally, since a licensee will be permitted to assign a portion of its license to a rural telephone company without violating the transfer and holding requirements, we expect that licensees will actively solicit participation by rural telephone companies. Id. at 463.

Rural telephone companies did not receive the substantial and specific bid credit and installment payment benefits that the Commission extended to the other two designated entities -- namely, small businesses and (prior to the Adarand Constructors, Inc. v. Pena, 115 S.Ct. 2097 (1995), decision) businesses owned by members of minority groups and women. Instead, the Commission gave rural telephone companies only the significantly less certain and less immediate partition opportunity.

In addition, contrary to the Commission's expectations, the entrepreneurs' block eligibility criteria did not result in a situation where many rural telephone companies were able to bid on C block licenses "without competition from the large telephone companies and other deep-pocketed bidders." Fifth Report And Order, supra at 5599. Rather, in the actual C block auction, these deep-pocketed bidders took advantage of the interstices and seams in such eligibility criteria to win the substantial majority of C block licenses. A mere three rural telephone companies won C Block licenses on their own (winning a total of eight of the 493 C block licenses), while approximately sixteen other C Block auction winners appear to be owned in whole or part by groups of rural telephone companies.

The majority of rural telephone companies appear to have relied upon the Commission's partitioning promises, and to have passed up or limited their participation in the PCS auctions while electing to wait for the appropriate time when they could negotiate

and enter partition agreements with applicants and/or licensees. Experience has demonstrated that such "appropriate time," if it exists, is likely to come six-to-eighteen months after the close of the auction when the licensee has developed and put into motion its initial construction plans.

To date, only a handful of geographic partition agreements appear to have been entered and filed with the Commission pursuant to the provisions of Section 24.714. Virtually no such agreements were entered prior to the A/B or C block auctions. Subsequent to these auctions, many A/B block licensees have responded to partition inquiries from rural telephone companies by indicating that they were currently focusing on technology and build-out issues, and that they preferred to defer discussions of potential partition arrangements to a later date.

Before rural telephone companies have had an opportunity to explore and exercise their promised partition rights -- in fact, before significant construction has commenced for most A and B block systems and before any C, D, E or F block systems have been licensed -- the NPRM proposes to dilute substantially, and perhaps abrogate entirely, these rights. If adopted, these changes would be grossly unfair to the many rural telephone companies who have limited their participation in the PCS auctions and relied instead upon their future capabilities to negotiate Section 24.714 partitions as the cornerstones of their PCS entry strategies. Moreover, abrogation, dilution or limitation of the sole auction benefit afforded to rural telephone companies contravenes the

Congressional policy and instructions set forth in Section 309(j).

Commission Should Not Expand A, B, D and E Block Partitioning To Encompass All "Qualified" Entities

Century vigorously objects to the NPRM's proposal to permit A, B, D and E block licensees to partition portions of their license areas to any qualifying entities -- that is, to entities that are neither rural telephone companies nor small businesses. Whereas the NPRM repeatedly refers to the Section 257 mandate for the Commission to eliminate entry barriers for small businesses, it is devoid of any rationale for extending partitioning rights to non-small businesses. The only reason advanced by the Commission in this regard has nothing to do with the Section 309(j) mandates of the Congress or other public interest factors, but rather is concerned only with the private interests of certain PCS licensees in some sort of undefined and unexplained "greater flexibility." NPRM at para. 19.

From a public interest standpoint, expansion of partitioning eligibility to include large entities has two major and crippling disadvantages. First, it will impair or destroy the ability of rural telephone companies to acquire partitioned licenses to serve their rural exchange areas. Second, it will complicate and prolong negotiations for partitioned licenses, and thereby substantially delay or preclude the deployment of broadband PCS in rural areas. In addition, unlimited partitioning could exacerbate technical compatibility problems, undermine the Commission's MTA and BTA licensing system, and be difficult to administer and confusing to

PCS customers.

For any or all of the above reasons, the Commission should reject the NPRM's proposal that A, B, D and E block licensees be permitted to partition portions of their license areas to any qualifying entity.

**Commission Should Not Expand C and F Block
Partitioning To Encompass Small Businesses**

Similar considerations apply to the NPRM's proposal to permit C and F block PCS licensees to partition portions of their license areas to any small business.

As the C block auction demonstrated, entities with deep pockets may qualify as "small businesses" under the Commission's rules. Hence, expansion of partition eligibility to small businesses is likely to result in an influx of deep-pocketed entities that will bid up the prices of partitioned licenses, and drive rural telephone companies from the partitioning market in a manner similar to the C block auction. Moreover, the very possibility of small business partitions will delay and complicate rural telephone company partition negotiations.

Finally, unlimited partitioning will create increased dangers of incompatible equipment, undermine the Commission's wide-area MTA and BTA licensing scheme, and confuse PCS users.

Therefore, the Commission should also reject the NPRM's proposal that C and F block licensees be permitted to partition portions of their license areas to small businesses.

Commission Should Not Preclude Any Rural Telephone Companies From Partitioning C And F Block Licenses

As indicated above, the Commission's Fifth Memorandum Report And Order, supra at 463, permitted rural telephone companies that did not qualify as "entrepreneurs" to partition portions of C and F block licenses. Some rural telephone companies have relied upon these prior Commission statements and rulings, and have elected to pursue partition options rather than participating extensively as non-attributable entities in C and/or F block applicants.

The NPRM now proposes to limit partitioning eligibility in the C and F blocks to eligible "entrepreneurs" or "small businesses." NPRM at para. 21. While it does not expressly address the matter, the NPRM appears to propose the elimination of the existing right of rural telephone companies that do not qualify as "entrepreneurs" or "small businesses" to obtain partitioned portions of C and F block licenses.

If adopted, this limitation would be grossly unfair to those rural telephone companies that relied upon the Commission's Fifth Memorandum Report And Order in developing their C and F block auction participation and partitioning plans. This is particularly true because the new limitation would be imposed after completion of the F block auction and after the deadline for filing of short-form applications for the F block auction. The Commission has a moral and legal obligation not to change its partition rules in mid-stream after rural telephone companies have relied upon them to their detriment, as well as a mandate from Congress to ensure that rural telephone companies have the opportunity to participate

in the provision of broadband PCS services (in this case, from whatever MTA or BTA licensee they can most rapidly and most satisfactorily negotiate a partitioning arrangement). Therefore, the Commission should reject the NPRM's proposal to limit partitioning in the C and F blocks to eligible "entrepreneurs" or "small businesses," and continue to permit all rural telephone companies to partition their service areas in these blocks.

Conclusion

The existing Section 24.714 partition rule constitutes the only specific "designated entity" benefit afforded by the Commission to rural telephone companies pursuant to the mandates of Section 309(j). While far less attractive and immediate than the bid credits and installment options provided to small businesses, partitioning still offers some hope that rural telephone companies can participate in the future in the provision of broadband PCS in their rural exchange areas. Moreover, the limitation of partitioning to rural telephone companies in their existing exchange areas avoids disruption of the Commission's PCS licensing scheme and minimizes technical and administrative difficulties. Therefore, the existing partitioning rule should not be changed by the Commission before rural telephone companies have had a fair opportunity to negotiate and implement partitions for their telephone exchange areas, particularly when many rural telephone companies have relied upon the existing rule in determining their broadband PCS auction participation and

strategies. Rather, the Commission should reject the NPRM proposals at this time, and expressly declare that the existing partition rule will remain in effect for the initial ten-year terms of all MTA and BTA licensees.

Respectfully submitted,
CENTURY PERSONAL ACCESS NETWORK, INC.

Susan W Smith / bdr
Susan W. Smith

August 15, 1996